

The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

CAMERON SHEA *et al.*,

Defendants.

NO. CR20-032JCC

GOVERNMENT'S MOTION
REQUESTING CONTINUANCE
OF TRIAL DATE

Noted: April 10, 2020

A. Introduction.

On March 17, 2020, the United States District Court for the Western District of Washington issued General Order No. 02-20 to address identified and anticipated impacts arising from a community outbreak of Coronavirus Disease 2019 (COVID-19). Citing guidance issued by public health officials, and documented risks to public gatherings and travel, the Order continued all criminal matters scheduled prior to June 1, 2020, pending further Order of the Court. The Order stated that:

the time period of the continuances implemented by this General Order will be excluded under the Speedy Trial Act, as the Court specifically finds that the ends of justice served by ordering the continuances outweigh the best interests of the public and any defendant's right to a speedy trial, pursuant to 18 U.S.C. § 3161(h)(7)(A).

General Order No. 02-20 at 2. The Court noted in conclusion that the General Order would be vacated or amended no later than April 15, 2020. As set forth below, the circumstances underlying the delay of trial and related dates in the General Order are acute in this particular case. The Court should enter the attached, proposed order setting a status conference in June to establish the trial date, and excluding all time from the Speedy Trial clock from the date of this motion until the status conference.

B. Limited Defense Counsel Access to the FDC SeaTac and the Scope of Discovery.

Defendants Shea and Cole are detained at the Federal Detention Center SeaTac while they await trial. The government understands that on March 16, 2020, the Bureau of Prisons announced the following:

- legal visitations at the Federal Detention Center SeaTac have been suspended “for at least the next 30 days”;
- attorneys may request special legal visits, which BOP will considered on a case-by-case basis;
- special legal visits, if approved by BOP, will require attorneys “to undergo screening prior to entry into the institution, including self-reporting and temperature check”; and
- BOP “strongly encourages” attorneys to request a confidential legal phone call rather than requesting a special legal visit.

These restrictions will make it impossible for defense counsel for Shea and Cole to adequately prepare for trial by the current trial date of April 27, 2020. On March 25, 2020, the government produced its initial discovery in the case. The discovery is voluminous, comprising of over 25,000 separate files, many of which are extensive video and audio recordings. Some of these materials are subject to a protective order that prohibit leaving the materials with the defendants at FDC SeaTac. In addition, the government is continuing to gather additional discovery for production. Furthermore, the government seized numerous

1 digital devices pursuant to search warrants. Those devices are still being examined, a
2 process that will take a substantial period of time.

3 In addition, on February 26, 2020, two other defendants, Taylor Ashley Parker-
4 Dieppe and Johnny Garza, were arrested in the Middle District of Florida, and the District
5 of Arizona, respectively. The two defendants did not make their appearance in this District
6 until March 27, 2020.

7 **C. Current COVID-19 outbreak and rapidly evolving public health response**

8 The public health crisis and corresponding impacts that prompted General Order
9 No. 02-20 remain largely unmitigated. To the contrary, COVID-19 is spreading throughout
10 the region, and the risk of exposure is increasing. Government officials at every level have
11 declared public health emergencies in an effort to insure crisis response efforts address
12 public safety concerns.¹ Public health experts uniformly recognize that immediate steps be
13 imposed to reduce transmission rates and preserve limited healthcare resources. Those steps
14 include canceling large gatherings, practicing social-distancing measures in smaller
15 gatherings, promoting telework opportunities, limiting travel, and avoiding close contact
16 with persons at elevated risk of infection, including older adults and persons with chronic
17 medical conditions (heart disease, diabetes, lung disease).² Indeed, on March 23, 2020, the
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23 ¹ State of Washington/Proclamation 20-07 by the Governor Amending Proclamations 20-05 and 20-06,
([https://www.governor.wa.gov/sites/default/files/20-07%20Coronavirus%20\(tmp\).pdf](https://www.governor.wa.gov/sites/default/files/20-07%20Coronavirus%20(tmp).pdf)); City of Seattle/Mayoral
24 Proclamation of Civil Emergency ([https://durkan.seattle.gov/wp-content/uploads/sites/9/2020/03/COVID-19-Mayoral-](https://durkan.seattle.gov/wp-content/uploads/sites/9/2020/03/COVID-19-Mayoral-Proclamation-of-Civil-Emergency.pdf)
25 [Proclamation-of-Civil-Emergency.pdf](https://durkan.seattle.gov/wp-content/uploads/sites/9/2020/03/COVID-19-Mayoral-Proclamation-of-Civil-Emergency.pdf)); United States/Proclamation on Declaring a National Emergency Concerning the
26 Novel Coronavirus Disease (COVID-19) Outbreak ([https://www.whitehouse.gov/presidential-actions/proclamation-](https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/)
27 [declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/](https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/)). All websites cited in this
28 motion were last visited on March 16, 2020.

² https://www.cdc.gov/coronavirus/2019-ncov/prepare/prevention.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fabout%2Fprevention.html; <https://www.cdc.gov/coronavirus/2019-ncov/community/large-events/index.html>;
<https://kingcounty.gov/depts/health/communicable-diseases/disease-control/novel-coronavirus/group-limits.aspx>;
<https://www.kingcounty.gov/depts/health/communicable-diseases/disease-control/novel-coronavirus/protection.aspx>.

1 Governor for the State of Washington issued an order directing that individuals in the State
2 shelter in place at least until April 6, 2020.³

3 The number of confirmed cases of COVID-19 within the Puget Sound region alone
4 increases daily.⁴ Experts predict the rate of infection will continue rising with most of the
5 U.S. population being exposed to the virus.⁵ Washington State is one of a number states
6 currently experiencing sustained community spread.⁶ Most of the cases in the State have
7 occurred in the Western District of Washington, and most in the counties from which the
8 jury pool in this case would be drawn.

9 It is impossible to predict public health conditions and corresponding social impacts
10 associated with the outbreak. At a minimum, we can reasonably assume that the exposure-
11 mitigation measures currently mandated by state and local officials will remain active for the
12 next six to eight weeks, if not longer.

13 **D. The impact of the COVID-19 outbreak and response on trial preparation**
14 **and trial proceedings**

15 The realized and projected impacts from the COVID-19 outbreak on trial preparations
16 and trial proceedings are substantial. These impacts warrant a continuance of the current
17 trial date.

18 *First*, the visitation restrictions at the Federal Detention Center will limit counsel's
19 ability to meet with the defendants ahead of the scheduled trial. In addition, recommended
20 risk reduction measures will curtail the government's ability to meet with witnesses. Several
21 anticipated witnesses reside outside the Puget Sound region. And although telephonic
22 contacts can be arranged, direct personal contact is strongly preferred to review relevant
23 documents.

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26 ³ State of Washington Proclamation 20-25 by the Governor,
[https://www.governor.wa.gov/sites/default/files/proclamations/20-25%20Coronavirus%20Stay%20Safe-](https://www.governor.wa.gov/sites/default/files/proclamations/20-25%20Coronavirus%20Stay%20Safe-Stay%20Healthy%20&tmp%29%20%28002%29.pdf)
27 [Stay%20Healthy%20&tmp%29%20%28002%29.pdf](https://www.doh.wa.gov/Emergencies/Coronavirus)

28 ⁴ <https://www.doh.wa.gov/Emergencies/Coronavirus>.

⁵ <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/summary.html>.

⁶ *Id.*

1 *Second*, the government and the Federal Public Defender's Office has encouraged
 2 personnel to telework in an effort to both reduce personal exposure and limit transmission
 3 risk to coworkers, consistent with the Governor's shelter-in-place order. Convening even
 4 small gatherings has been discouraged.

5 *Third*, government counsel anticipates—based on discussions with colleagues who
 6 have April trials—that trial witnesses in this case will raise health and safety concerns
 7 associated with traveling to, and participating in, trial proceedings in the Puget Sound region.
 8 These are legitimate concerns given the high number of confirmed COVID-19 cases
 9 identified in this region.

10 *Fourth*, as for trial proceedings, it is fair to assume that either the Governor's shelter-
 11 in-place order, or similar social-distancing restrictions, will remain in place through what
 12 would have been the trial preparation period, and potentially through the trial date as well.
 13 Compliance with these directives will make it impossible to select a jury and proceed with a
 14 trial.

15 *Finally*, impaneling a jury that represents a fair cross-section of the community will
 16 likely be very difficult given the anticipated progression of the COVID-19 outbreak.⁷
 17 Policies governing jury service in some jurisdictions were recently amended to allow
 18 prospective jurors to be excused if they met any of the following criteria: chronic health
 19 conditions such as heart disease, lung disease, or diabetes; weakened immune system;
 20 pregnancy; age 60 or older; and sick or recently been in contact with someone who is sick.⁸
 21 Adopting a similar policy in this Court would dramatically restrict the pool of prospective
 22 jurors. Moreover, child care issues due to the closure of all schools will also impact this
 23 question.

27 ⁷ Washington State Superior Courts in King, Snohomish, and Pierce counties have suspended all jury trials through at
 28 least April 24, 2020. <https://www.seattletimes.com/seattle-news/crime/king-county-superior-court-suspends-criminal-jury-trials-until-april-wont-be-sending-out-juror-summons/>.

⁸ <https://www.kingcounty.gov/courts/superior-court.aspx>.

1 **E. Conclusion.**

2 The government therefore respectfully request the following:

- 3 • The Court should **vacate the current date** in the case.
- 4 • The Court should **set a status hearing** on or after June 1, 2020. At that status
- 5 hearing, the Court can set a new trial date after considering the relevant factors,
- 6 including the Court's calendar and the current status and collateral
- 7 consequences of the ongoing public health crisis.
- 8 • Finally, the Court should **exclude all time between the filing of this motion**
- 9 **and the date of the status conference.** The Court should enter a new order
- 10 under 18 U.S.C. § 3161(h)(7)(A) extending through the date of the status
- 11 conference, and finding that the ends of justice served by continuing the trial in
- 12 this case outweigh the best interest of the public and the defendants to a speedy
- 13 trial.

14 Dated this 30th day of March, 2020.

15 Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 30, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all registered parties.

/s/ Salee Porter
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